

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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BEN A. RHODES,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

03:04-CV-0521-LRH (RAM)

ORDER

Presently before this Court is a motion to intervene (#12<sup>1</sup>) brought by Employers Insurance Company of Nevada (“Employers Insurance”). Plaintiff Ben Rhodes has filed a response (#14) stating his non-opposition to the intervention but contending that any adjudication of lien rights would be premature at this time. Employers Insurance has filed a reply (#15).

The underlying suit is brought under the Federal Tort Claims Act, 28 U.S.C. §§ 2671, *et seq.* The law of Nevada thus determines the liability of the United States for any negligent acts, 28 U.S.C. § 1346(b)(1), requiring the Court to consider Nevada’s rules for intervention. *See Employers’ Fire Ins. Co. v. United States*, 167 F.2d 655, 657 (9th Cir. 1948) (noting that it “seems clear that the United States if a private person would be liable to the subrogated claimant, for such is the law in California, where the act or omission occurred” (internal quotations omitted)).

Nevada has interpreted its intervention rules, *see* Nevada Rule of Civil Procedure 24(a), to permit the intervention of an insurer whose rights are subrogated to an injured party pursuant

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<sup>1</sup> References to (# XX) refer to the Court’s docket.

1 to Nevada Revised Statute section 616C.215(2)(b). *State Indus. Ins. Sys. v. Eighth Judicial Dist.*  
2 *Court*, 111 Nev. 28, 32 (1995). Accordingly, Employers Insurance is entitled to intervene in this  
3 matter and the motion to that effect will be granted.

4 However, the parties have not properly raised, nor briefed the issues surrounding the  
5 potential adjudication of the extent of Employers Insurance lien rights under Nevada law. As  
6 such, the Court does not pass on that issue at this time, reserving ruling until the issue is properly  
7 before the Court.

8 IT IS HEREBY ORDERED

9 DATED this 29<sup>th</sup> day of December, 2005.

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13 LARRY R. HICKS  
United States District Judge  
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